



Office of the Attorney General

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September 8, 1987

Mr. Gary R. Baker
Executive Director
State Ethics Commission
1122 Lady Street, Suite 930
Columbia, South Carolina 29201

Dear Mr. Baker:

By your letter of August 21, 1987, you have asked for the opinion of this Office as to whether the dual office holding prohibitions of the South Carolina Constitution would be violated by one individual who would serve concurrently on Horry County Council and on the board of directors of the Horry County Council on Aging, Inc. For the reasons following, it is the opinion of this Office that the individual so described most probably would not hold dual offices in contravention of the Constitution.

Article XVII, §1A of the South Carolina Constitution provides that "...no person shall hold two offices of honor or profit at the same time." For this provision to be contravened, a person concurrently must hold two public offices which have duties involving an exercise of some portion of the sovereign power of the State. Sanders v. Belue, S. C. 171, 58 S.E. 762 (1907). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. State v. Crenshaw, 274 S. C. 475, 266 S.E.2d 61 (1980).

There is no question but that one who serves on a county council would hold an office for dual office holding purposes. This Office has so advised on numerous occasions; as representative of those numerous opinions, enclosed is an opinion dated July 9, 1986.

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This Office has apparently not opined as to a member of a board of directors of a county council on aging relative to dual office holding. I have not located any act of the General Assembly creating the entity, nor have I found statutory provisions pursuant to which the entity would have been created. I have learned from the office of the Secretary of State that the entity is chartered as an eleemosynary corporation. Because the individuals serving on the board of directors would be doing so presumably pursuant to duly-adopted by-laws rather than statutes, these individuals would not be considered office-holders for purposes of dual office holding. See Ops. Atty. Gen. dated July 9, 1986; November 10, 1983; July 1, 1977; and October 25, 1984, copies of which are enclosed. The reasoning in those opinions would be applicable in this situation, also.

To summarize, one who would serve simultaneously on Horry County Council and on the board of directors of the Horry County Council on Aging, Inc., would most probably not hold dual offices as prohibited by the Constitution of South Carolina.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

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Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions

cc: Steve Dawsey